I do not see how it can be argued that the respondents as applicants in the arbitration proceedings had not discharged the onus which lay upon them. This ground, therefore, must fail.

The second ground of appeal is that there was no evidence upon which the learned arbitrator was justified in holding that death was due to coronary thrombosis and heart failure precipitated by the work which the deceased was performing immediately before his death. I do not agree. The arbitrator accepted the evidence of Mr. Ng Cheuk Heng as to the cause of death by heart failure, and he believed the doctor's evidence that the exertion of the work had contributed to the death of the deceased. It will be observed that even Dr. Balasingam agreed that if there are signs of old attacks of coronary thrombosis, large or small, the patient is predisposed to further attacks and that this may be a case of coronary thrombosis. His opinion that he could not say whether the cause of death was coronary thrombosis or not was clearly based on the absence in the post-mortem report of any mention or indication of atheroma or blood clots. He said that if he conducted a post-mortem in a case indicative of coronary thrombosis, in the absence of evidence of atheroma, he would cut the blood vessels transversely to look for the blood clot, but against that we have the opinion of Mr. Ng that the possibility of death by coronary thrombosis did not occur to Dr. Mitra who carried out the post-mortem. In the circumstances it is not surprising that there was no mention of atheroma or blood clots in the post-mortem report. But the indication as to the likely cause of death is furnished by the two old infarction scars. All this satisfies me, as it appears to have satisfied the arbitrator, that the functional disturbance occasioned by the work of the deceased was intimately connected with and contributed to the workman's death. There is therefore no substance in this ground of appeal either.

The third ground of appeal is that the medical evidence indicated the possibility that the work performed by the deceased since he had previous attacks of coronary thrombosis would probably have resulted in a steady deterioration in his heart ultimately leading to his death, and that where death is due to deterioration of a physical condition over a period of time as a result of work performed there is no accident within the meaning of the Ordinance. This ground in my opinion is also without any substance. It has been held again and again that the fact that a man's condition predisposes him to a cardiac failure is immaterial where such failure takes place in the course of and is caused by his work, unless it can be shown that the work itself did not contribute to or accelerate the death. In this case the learned arbitrator believed that the exertion of work contributed to the death of the deceased and the evidence before him including the evidence of Mr. Ng Cheuk Heng, which he accepted, supported that finding.

The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Shearn, Delamore & Co.*; *P. G. Lim.*

KAMUNING (PERAK) RUBBER & TIN CO. LTD. v. ABRAHAM

[O.C.J. (Hepworth J.) September 12, 1964]

[Alor Star — Civil Suit No. 157 of 1964]

Landlord and Tenant — Premises belonging to employer occupied by employee — Licence to use premises free of charge — Termination of employment — Injunction.

Master and Servant — Occupation of premises by servant — Termination of employment — Injunction to restrain occupant.

The plaintiffs the owners of a bungalow in Sungei Patani, Kedah allowed the defendant who was employed by them as a senior conductor to occupy it free of charge for the effectual performance of his duties. The services of the defendant were terminated and one month's pay in lieu of notice was offered to him. The defendant was also asked to vacate the bungalow. He failed to do so and the plaintiffs commenced an action for an order that the defendant quit and vacate the bungalow or for an injunction to restrain the defendant and all persons holding through or under him from remaining in or upon the bungalow.

Held: the defendant had no defence to the action and this was a proper case in which an injunction should be granted.

Cases referred to:—

(1) *Janisse* v. *Livesey* [1944] 4 D.L.R. 73.

(2) *Collison* v. *Warren* [1901] 1 Ch. 812 at p. 817.

(3) *Canadian Pacific Railway* v. *Gaud & Ors.* [1949] 2 K.B. 239 at p. 241.

(4) *Thomson* v. *Park* [1944] K.B. 408 at p. 409.

MOTION FOR INJUNCTION.

A. Jayadeva for the plaintiffs.

Lim Kean Chye for the defendant.

Hepworth J.: The plaintiffs are and at all material times were the legal owners of the bungalow situated on the land comprised in Lot No. 1502 Grant No. 29404, Mukim of Sungei Patani in the State of Kedah, and of the said land and all other lands comprising K. M. S. Estate, Sungei Patani.

The defendant was employed by the plaintiffs as a senior conductor and was allowed to occupy the said bungalow for the effectual performance of his duties as such. The defendant was allowed to occupy the said bungalow free of charge.

On the 6th January, 1964, the manager of

the estate on behalf of the plaintiffs wrote to the defendant informing him that his services were terminated and one month's pay in lieu of notice was offered to him. In the same letter the defendant was required to hand over the said bungalow and vacate the same on the 14th January, 1964.

Notwithstanding this letter the defendant continued to reside in the bungalow and so continued up to the date of the hearing of the motion.

On the 18th July, 1964, a specially indorsed writ was issued by the plaintiffs praying for judgment against the defendant for:—

(i) An Order that the defendant and all persons holding through or under him do quit and vacate the said bungalow then occupied by him forthwith or in the alternative;

(ii) For an injunction restraining the defendant and all persons holding through or under him from remaining in or upon the said bungalow;

(iii) For damages in respect of the unlawful occupation of the said bungalow by the defendant from the 14th January, 1964, up to the date when vacant possession of the said bungalow is given; and

(iv) Costs.

This motion which prays for an order that the defendant and all persons holding through or under him may be restrained until the trial of the action from remaining in or upon the said bungalow was served with the writ on the defendant on the 1st August, 1964. The defendant entered appearance on the 12th August, 1964.

The plaintiffs asked for the injunction in this motion on the ground that the continued occupation by the defendant of the said bungalow was causing irreparable inconvenience and damage to the plaintiffs in that the plaintiffs were not then and had since the 14th January, 1964, not been able to instal another employee in the bungalow and unless the defendant was ordered to vacate the bungalow this situation would continue until the rights of the parties were finally adjudicated upon. In addition it was alleged that the defendant was utilizing not only the said bungalow but also the furnishings and fittings therein belonging to the plaintiffs.

The plaintiffs alleged that the defendant had no defence whatsoever to the action.

The plaintiffs contended that where the occupation of premises by a person is as servant of the owner for the more effectual performance of his duties as such servant and that person is dismissed from his employment he has no right to continue in occupation of the premises and an injunction will be granted preventing him from so doing notwithstanding that he may have an action for damages for wrongful dismissal. The authority for this is quoted as *Janisse* v. *Livesey*.[1] The plaintiffs also quoted in support of their submissions the cases of *Collison* v. *Warren*,[2] *Canadian Pacific Railway* v. *Gaud & Others* [3] and *Thomson* v. *Park*.[4]

The defendant filed no affidavit in reply. It was argued on the defendant's behalf that the plaintiffs must show a strong *prima facie* case that the plaintiffs' legal rights were in question. It was argued that the affidavit did not show the terms of employment of the defendant, how the lawful process of termination of that employment was carried out, and even assuming that they could be terminated were the defendant's services in fact terminated. It was also contended on behalf of the defendant that no irreparable damage would be done if the injunction was not granted as there was no evidence given that some other employee had been given employment and as a result required the use of the bungalow.

There did not appear to me to be any merit in the defendant's arguments and in addition he had failed to file an affidavit offering any explanation in reply to the plaintiffs. In my opinion this was a proper case in which an injunction should be granted in the terms of the motion at this stage of the action and I so ordered subject to the plaintiffs giving an undertaking as to damages.

An application was made for a stay of execution which I refused because, as I have already said, in my opinion there was no merit in the defendant's submissions on the question of the occupation of the bungalow.

Injunction granted.

Solicitors: *Shearn, Delamore & Co.*; *Lim Cheng Ean & Co.*

TEY SIEW GOH v. TAY TIAN SOO

[O.C.J. (Gill J.) September 12, 1964]
[Muar — Civil Suit No. 47 of 1963]

Damages — Personal injuries — Skull and brain — Possible future effects — Hypothetical.

Negligence — Standard of care required of the driver of motor vehicle — Contributory negligence of child — Damages.

The plaintiff a girl of about 12 years sued by her next friend for damages in respect of personal injuries sustained by her in consequence of her having been knocked down by a motor lorry driven by the defendant. The plaintiff had alighted from a bus and was running across the road when she was knocked down by the lorry. She suffered multiple abrasions and contusions and a fracture of the skull, the permanent effect of which was that she had a limp on the left foot and a tendency for her to trip.